

**Fair Political Practices Commission**  
**MEMORANDUM**

**To:** Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy  
**From:** Scott Hallabrin, General Counsel  
**Subject:** Prenotice Discussion of Amendments to Regulation 18360  
**Date:** December 26, 2007

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Proposed Commission Action and Staff Recommendation: Approve publication of notice for amendment of Regulation 18360 at the Commission meeting in March 2008.

Reasons for Proposal: The proposed amendments to this regulation bring it into conformity with Government Code Section 83115. Section 83115 provides as follows:

Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this title relating to any agency, official, election, lobbyist or legislative or administrative action. Within 14 days after receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, the commission has taken or plans to take on the complaint, together with the reasons for such action or nonaction. If no decision has been made within 14 days, the person who made the complaint shall be notified of the reasons for the delay and shall subsequently receive notification as provided above.

This statute requires that when a person files a complaint signed under penalty of perjury alleging violations of the Act (known as a “formal complaint”), the Commission must inform the person within 14 days of the action it intends to take on the complaint and the reasons for the action. If, at the end of the 14-day period, the Commission has not decided what action to take, it must inform the person of the reasons for the delay and provide the person with updated information at 14-day intervals until it finally decides on a course of action.

Existing Regulation 18360 sets forth the procedures the Commission follows to comply with Section 83115. In addition to several technical revisions, staff believes the regulation needs to be substantively modified in several respects.

Subdivision (a) of the existing regulation only applies the formal complaint process to complaints alleging violations of the Act at the state level. Section 83115 does not confine its application to alleged state-level violations. Therefore, staff proposes that the regulation be modified to apply the formal complaint process to any alleged violations of the Act, whether at the state or local level.

Subdivision (b) of the existing regulation permits a formal complaint to be filed by use of either the Commission's own form or a document created by the complainant that includes specified minimum information. Staff has developed a formal complaint form, available online, to ensure consistency in format and save staff time in processing these complaints. Also, since the formal complaint is signed under penalty of perjury, staff proposes adding a provision requiring that a formal complainant state in the complaint the basis for his or her personal knowledge that the allegations are true and correct.

Subdivision (c) of the existing regulation permits persons to file "informal" complaints with the Commission. The statute makes no mention of informal complaints and the regulation does not specify their format. Staff proposes modifying the regulation to permit a person who does not desire to file a formal complaint to supply information concerning possible violations to the Commission anonymously by telephone. This will save staff time in processing unnecessary paperwork. The Commission retains the ability to "investigate possible violations," pursuant to Section 83115, "on its own initiative."

Also, the existing regulation requires staff to provide the Commissioners with unspecified information on informal complaints on a regular basis (subdivision (c)) and provide Commissioners with a copy of each formal complaint (subdivision (d)).

To avoid potential due process issues, staff believes the Commissioners should be provided with the minimal information necessary to inform them of the matters under consideration by the Enforcement Division. Therefore, staff proposes amending the regulation to define exactly what information will be provided to the Commissioners on formal complaints.

Subdivisions (e) through (i) of the existing regulation require the Commission and staff to engage in a potentially elaborate process to arrive at a decision on the action to take on the formal complaint and notify the complainant of that decision. The process could involve as many as three Commission closed sessions and internal deliberations of indeterminate length. Staff believes these procedures are unduly complicated, unnecessarily consume time of the Commission and staff, pose serious due process concerns, and delay providing the information to the complainant required by Section 83115.

Staff therefore proposes eliminating this process and amending the regulation to instead provide that the Executive Director's response to the complainant as set forth in new subdivision (f) serve as the Commission's statutorily-required response to the formal complaint. In addition, in subdivision (f), staff proposes providing all persons who are the subject of the formal complaint with a copy of the complaint, but may withhold all or part of the information in the complaint if the Chief of Enforcement believes providing it to the potential respondent is likely to jeopardize an investigation.

In new subdivision (g), staff proposes providing a person who files a formal complaint with continuing information on the status of the case after the Enforcement Division commences an investigation of the complaint.